IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2794 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NITINSINH PARBATSINH RAOL PEON CUM DRIVER - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MRS KETTY A MEHTA for Petitioner No(s).: 1.

MR KL PANDYA AGP for Respondent No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 2,3.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 25/07/2005

ORAL JUDGMENT

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1.0 The petitioner herein has prayed for the following reliefs;

> "(A) By a writ of mandamus and / or by a writ in the nature of mandamus and / or by any other writ, direction or order, respondents herein be directed not to relieve the petitioner from service as Peon cum Driver from the office of Mamlatdar, Mansa and respondents herein be directed to continue the petitioner as Peon cum Driver in the office of Mamlatdar, Mansa.
>
> (B) By a writ of mandamus and / or by a writ in the nature of mandamus and / or by any other writ, direction or order, respondents herein be directed to treat the petitioner on regular basis as Peon cum Driver in the office of Mamlatdar, Mansa.
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> (C) Pending the hearing and final disposal of this writ petition, execution, operation and implementation of the order dated 31st March, 2000 be stayed in so far as Shri S.C. Thakor has been transferred as Peon cum Driver in place of the petitioner and the direction to relieve the petitioner is mentioned therein and the respondents herein be further directed to continue the petitioner in the service as Peon cum Driver in the office of Mamlatdar, Mansa.
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> (D) .....
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> (E) ....."

2.0 While admitting the matter on 07.04.2000, this Cout had granted ad-interim relief in terms of Para-13(C) of the petition which was subsequently modified vide order dated 02.08.2000. The said order dated 02.08.2000 reads as under;

> "Heard learned counsel for the petitioner. In spite of service of notice, none appears on

behalf of the State. In this case, ad-interim relief was passed to continue the petitioner in service. Learned counsel further submitted that since none appears on behalf of the government, ad-interim order may be continued.

It appears from the petition that the petitioner was engaged as Peon cum Driver in the office of Mamlatdar, Mansa on a fixed term basis as daily wager, but because of the ad-interim order passed by this Court on 07.04.2000, petitioner is continuing, even though, in the meantime, one employee Mr. Thakor regular Peon cum Driver has been posted in the office of Mamlatdar, Mansa. It further appears that at present two persons are working as Peon cum Driver against one Post in the office of the Mamlatdar, Mansa.

The Government in spite of service of notice is taking no interest. Learned Government counsel has requested to entrust the matter to a Asst. Government counsel or he may personally conduct the matter on the next date of hearing. Copy of the order may be served on learned Government counsel. List this case on 09.08.2000. Ad-interim order granted earlier will continue till then."

3.0 It may be noted that though the matter was moved in the year 2000, no regular appointment has been made and the petitioner has continued to work on the said Post, pursuant to the order of this Court. Hence, it would be appropriate to continue the petitioner on the said Post till a regular appointment is done on the said Post.

4.0 In above view of the matter, the respondent authority is directed not to relieve the petitioner from his duties till a regular appointment is done on the said

Post. With the aforesaid direction, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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